

# INFORMATION LETTER

Not for  
Publication

NATIONAL CANNERS ASSOCIATION

For Members  
Only

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## ADMINISTRATOR ANDREWS RESIGNS

### Lieut. Col. Philip Fleming to Supervise Operations of Wage and Hour Division

Elmer F. Andrews, for almost a year administrator of the wage and hour provisions of the Fair Labor Standards Act, resigned this week, effective October 16. On October 18, Secretary of Labor Frances Perkins detailed Harold D. Jacobs, an assistant administrator of the Wage and Hour Division in charge of information, to "perform the duties of the office of deputy administrator of the Wage and Hour Division until further notice."

This, in effect, makes Mr. Jacobs acting administrator of the Division. He will work under the supervision of Lieut. Col. Philip Fleming, Army district engineer from St. Paul, who has been detailed to Secretary Perkins as a special Labor Department advisor in connection with the administration and coordination of the Wage-Hour and Public Contracts Divisions of the Labor Department.

The coordination of the work of these two divisions of the Department of Labor will comprise only the investigating staffs, and will be designed to lessen duplication of work by field men and to save expense in investigations.

Colonel Fleming served as district engineer in charge of power development of the abandoned Passamaquoddy tide-harnessing project in Maine, and later as coordinator of the Resettlement Administration. He is expected to take over his new duties within a few days.

Among other personnel developments was the resignation of Paul Sifton, deputy wage-hour administrator, who had served under Mr. Andrews when he was industrial commissioner of New York State.

## URUGUAY TRADE PACT PLANNED

### Only Canned Item on List of Uruguayan Products Considered for Concessions is Meat

The only canned food item included in the list of products imported from Uruguay on which the United States has announced its intention to consider granting tariff concessions under forthcoming negotiations of a trade agreement with that country, is canned beef and veal. Formal notice of intention to negotiate the trade pact was announced October 20 by Secretary of State Hull.

Other food products in the list of items considered for concessions are: extract of meat, including fluid; beef and veal, pickled or cured, not packed in airtight containers, not specifically provided for; and sausage casings, weasands, intestines, bladders, tendons, and integuments, all the foregoing not of sheep, lambs, or goats, and not specially provided for. Other items on the list include wools, vegetable oils, tallow, and hides and skins of cattle.

Briefs containing information and views in writing on the proposal to grant tariff concessions on the products listed must be filed by November 18 with the Committee for Reciprocity Information, Eighth and E Streets, N. W., Washington, D. C. No list of products on which Uruguay will consider granting reductions in tariff is furnished, but exporters interested in having United States products considered by Uruguay for tariff reductions and concessions should submit briefs on this subject with the Committee by November 18. Six copies of these statements should be submitted, of which one copy must be sworn to.

Those persons desiring to be heard at the public hearings opening December 5, must file applications for a hearing by November 18.

## STATEMENT ON OVERTIME EVASION

### Wage-Hour Counsel Issues Opinion on Manipulation of Rates of Pay under Act

With the reduction of the maximum workweek to 42 hours under the Fair Labor Standards Act, and the increase of the minimum wage rate to 30 cents an hour, effective October 24, General Counsel George A. McNulty of the Wage and Hour Division has issued an opinion relative to the manipulation of rates of pay to avoid the effect of the overtime requirements of the Act. The opinion states:

"On October 24 the Fair Labor Standards Act will require that every employee subject to its provisions receive time and a half overtime compensation for all hours worked in excess of 42 hours in any workweek. Anticipating the 42-hour week, many employers have written to the Division setting forth a variety of methods by means of which they hope to work their employees the same number of hours presently worked (in excess of 42) without paying them any more than they are now paid. This opinion deals with the legality of these various plans to avoid the effect of the 42-hour week. The opinion is equally applicable, however, to any plans now being used to avoid the effect of the 44-hour week.

"Section 7 of the Act requires that overtime must be paid at the rate of time and one-half the 'regular rate' of pay at which the employee is employed. Time and a half must, therefore, be paid upon the rate at which the employee is actually employed and paid and not upon a fictitious rate which the employer adopts solely for bookkeeping purposes. An examination of the methods suggested by employers as a means of continuing to work overtime hours without any increased wage bill will demonstrate the illegality of adopting a bookkeeping rate for purposes of the Wage and Hour Law and a different rate for any other purpose. Resort to these methods will constitute a violation of Section 7 and will subject the employer to the penalties prescribed in the Act.

#### 1. SALARIED EMPLOYEES

"It is clear that an employer will violate the Act if he simply pays no attention to its requirements next October 24 but continues to work his employees the same number

of hours (in excess of 42) they now work for the same salary they now receive. In our opinion an employer who will continue to work his employees in excess of 42 hours after October 24 for the same salary they now receive but who takes the trouble to manipulate the rates of pay in order to adopt a rate upon which he may calculate the time and a half, without incurring any additional labor cost, stands in no better position than the employer who simply and frankly disregards the overtime requirements of the Act.

"Employers have proposed two principal methods of avoiding overtime payment to salaried employees. The employer, by one plan, will announce that henceforth the employee is either employed at the rate of 30 cents an hour or at an hourly rate in excess of the minimum. But each week the employer will pay the employee a 'bonus' to make up the fixed salary. Obviously, the employee will not actually be paid at the rate adopted by the employer for overtime calculation. His regular rate of pay for overtime purposes must be based on the total weekly earnings including the bonus.

"The employer eliminates the 'bonus' feature in the second method. If the employee works an irregular number of hours the employer proposes to adopt a different rate each week upon which to compute overtime. Each week the employee's earnings, on the basis of the adopted rate for 42 hours and time and a half such rate for the excess hours will equal or approximately equal the fixed salary. Thus, for example, if an employee, during the course of a month, works 43, 46, 52 and 48 hours respectively, the employer, to continue paying him \$21 weekly, will adopt 48 cents, 44 cents, 37 cents and 41 cents as the respective rates of pay. Obviously, these rates are pure bookkeeping figures and the regular rate of pay on which overtime must be paid will be determined by dividing the \$21 weekly salary by the hours worked each week.

"If the employee works a regular number of hours, the employer proposes to adopt a rate, which for 42 hours and at time and a half such rate for the hours in excess of 42, will yield the present earnings. The fact that the computations on the adopted rate will produce a figure equal to the employee's present total compensation cannot obscure the real situation. This employer will be in no better position than the employer who proposes to adopt the minimum wage as the overtime rate with a 'bonus' scheme, or to juggle the rates from week to week. This employer seeks to adopt one rate for overtime purposes, but will expressly or impliedly guarantee his employees another—based upon the weekly salary. The regular rate of pay on which overtime must be based will be determined by dividing the weekly salary by the regular number of hours worked.

#### II. HOURLY RATE EMPLOYEES

"The employer will announce that he is 'reducing' the hourly rate of all his employees to 30 cents an hour for the first 42 hours and 45 cents for the hours in excess of 42. However, he will guarantee to each employee a weekly amount not less than the amount presently paid. Obviously, the adopted rate of 30 cents is a fictitious, bookkeeping entry, which does not change the employees' regular rate of pay.

"The case is no different where the rate adopted will not be the minimum but will be a rate which, with time and a half for overtime, will yield approximately the same weekly earnings for the regular number of hours worked. Employees will not generally consent or acquiesce when the employer purports to reduce the rates unless they are assured they will not lose any pay but will continue to receive their present earnings. When the employees are given this assurance, expressly or impliedly, they are receiving an express or implied guarantee of their present earnings and

their true rate of pay remains unchanged. In the absence of an express or implied guarantee, the question will be whether the employer has actually reduced the regular rate of pay. Will the employee be paid at the adopted rate or at his present rate when he does *not* work the full number of hours? If he is paid at his present rate, in such case, then the adopted rate is not his regular rate of pay but only a rate upon which the employer computes overtime on his books. It cannot, therefore, be the regular rate of pay upon which time and a half must be based.

#### III. PIECEWORKERS

"An employee is now employed on a piece-rate basis. The employer will announce that henceforth the employee will be employed at an hourly rate of 30 cents an hour for 42 hours and 45 cents an hour for all hours in excess of 42, although the employee will continue to receive his full piecework earnings at the present piece-rates. Obviously, 30 cents is not the regular rate of pay; it is not the rate at which the employee is actually paid. The case is no different if the employer adopts a rate in excess of the minimum. So long as the employer continues actually to pay at the piece rates now in effect, the regular rate of pay will be determined by dividing the piecework earnings by the hours worked each week, and the employee will be entitled to time and one-half that rate for hours worked in excess of 42."

#### IV. SECTION 18

Section 18 of the Act states: "No provision of this Act shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this Act, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this Act."

"Much has been heard about Section 18 in connection with the plans just set out. But Section 18 does not enter into the picture, except to reinforce the opinions just expressed as to what Congress intended by the words 'regular rate' of pay in Section 7. It may be helpful, however, to discuss briefly some of the situations to which Section 18 is meant to apply.

"By enacting Section 18, Congress primarily intended to discourage the possible tendency that the minimum wage fixed in the Act will become the maximum wage paid by employers. Thus, an employer who cuts the wages of his employees earning in excess of the minimum to avoid an increase in total labor cost due to the fact that he must raise the wages of many of his employees to 30 cents an hour, will violate Section 18. Section 18 was also intended to expressly allay the fears of labor that employers who are bound by contract to maintain higher wage and hour standards than those fixed in the Act, would use the Act as an excuse not to perform their contracts. Where the employer is under contract, the employees have no need to rely upon Section 18. Nothing in the Act relieves an employer from any obligation he may have assumed by contract to maintain standards higher than those fixed in the Act. Section 18 removes every possible doubt on this score. The employees may proceed to enforce their contract rights."

#### Senate Continues Neutrality Debate

While the Senate continued to debate neutrality issues during the past week, Representatives utilized short daily sessions of the House to discuss the proposed trade agreement with Argentina, farm relief problems raised by drought conditions over the country, and neutrality legislation.

Although administration leaders in both the Senate and House have confined Congressional action to the neutrality

measure, it now seems likely that an appropriation bill for the relief of flood and drought stricken areas will be enacted before the special session adjourns.

#### Fourth Service Kitchen Recipe Leaflet Issued

Copies of the fourth Service Kitchen recipe leaflet, "Tempting Recipes for Canned Foods," were mailed to members of the Association this week. Distribution also is being made to food editors of newspapers and magazines, members of the Home Economics Women in Business, and a list of persons who, after receiving copies of the other Kitchen leaflets, had requested that the new leaflets be sent to them as they are issued. This is the last of the series to be published this year, and with the other three booklets comprises the first series of recipes developed in the Association's Service Kitchen to feature canned foods. All groups of commodities have been covered during the year, although it was impossible, in such small books, to use all canned products in each booklet.

The titles of the other three leaflets are: "Easy Recipes Using Canned Foods," December, 1938; "Every Day Recipes for Canned Foods," spring, 1939; and "Summertime Recipes for Canned Foods," published during the past summer.

In preparing the recipes for this book, Katherine Smith, who is in charge of the Service Kitchen, bought her canned foods at a neighborhood grocery store, just as the average housewife does. Miss Smith has developed further her plan to prepare foods suited for average families by working out her method of "taste testing" of finished foods. She prepares as many dishes as she can in the morning and invites a small group to come to the Kitchen for lunch. The sampling then becomes a part of the lunch.

Miss Smith is able to get an impartial opinion of the dishes, and she reports that some people have said, "it is the only place they have ever been where they were thanked for criticizing the foods."

The response from housewives to the Service Kitchen recipe leaflets has shown that women welcome recipes with new ideas and with modernized old favorites. Every day the mail brings requests for additional copies.

In addition to developing these general recipes for the industry, Miss Smith has tested and developed recipes for individual canner's products. Whenever this type of work is done, the member sends the product or products he wishes used to the Kitchen. Miss Smith, then, either tests the recipes already used by the canner, or develops new recipes for the product. This service is available to any member of the Association.

#### Wage-Hour Ruling on Employee Meetings

The Wage and Hour Division this week clarified its views on meetings and lectures attended by employees in connection with their work. In a revision of its Interpretative Bulletin No. 13, the administration restates the enforcement policy of the Division in determining whether time spent in attending these meetings should be considered "hours worked" under the Act and therefore paid for.

The restatement of policy considers attendance at meetings and lectures as hours worked:

1. If attendance is not in fact voluntary.
2. If "such meetings and lectures are directly related to the employee's work, as, for example, meetings and lectures for the purpose of teaching the employee mine rescue, fire prevention and control, and the use of new types of machinery or methods on his job."

#### 1939 Pack of Sweet Corn Declines 5,000,000 Cases

The 1939 pack of canned sweet corn, exclusive of corn on the cob, amounted to 15,290,580 actual cases, compared with 20,846,842 cases in 1938, according to statistics compiled by the Association's Division of Statistics. Twenty canners reported a pack of corn on the cob totaling 479,413 cases. In 1938, 24 canners reported a pack of 533,766 cases of corn on the cob.

In the following table are shown the total 1938 and 1939 packs of sweet corn, exclusive of corn on the cob, by States:

| States                                | 1938       | 1939       |
|---------------------------------------|------------|------------|
|                                       | Cases      | Cases      |
| Maine, Vermont and New Hampshire..... | 1,878,082  | 790,167    |
| New York.....                         | 1,913,378  | 1,330,637  |
| Maryland and Delaware.....            | 2,238,903  | 1,398,562  |
| Pennsylvania.....                     | 513,351    | 482,129    |
| Ohio.....                             | 1,197,165  | 944,880    |
| Indiana.....                          | 1,673,582  | 1,851,843  |
| Illinois.....                         | 2,921,170  | 2,636,554  |
| Wisconsin.....                        | 1,484,492  | 1,076,622  |
| Minnesota.....                        | 3,624,406  | 3,025,897  |
| Iowa and Nebraska.....                | 2,219,158  | 1,102,176  |
| Other States—East.....                | 427,183    | 177,312    |
| Other States—West.....                | 755,972    | 467,792    |
| Total.....                            | 20,846,842 | 15,290,580 |

In the following split table is shown the pack of sweet corn in 1938 by States and varieties.

| States                     | Cream Style Corn |              |                   |         |           |
|----------------------------|------------------|--------------|-------------------|---------|-----------|
|                            | Ever-green       | Narrow Grain | Country Gentleman | Crosby  | Golden    |
|                            | Cases            | Cases        | Cases             | Cases   | Cases     |
| Me., Vt., and N. H.....    |                  |              |                   | 156,077 | 507,986   |
| New York.....              | 13,324           |              | 8,349             | 720     | 782,145   |
| Maryland and Delaware..... | 541,400          | 1,925        | 15,051            |         | 259,244   |
| Pennsylvania.....          | 50,912           | 3,000        | 130               |         | 60,012    |
| Ohio.....                  | 108,000          | 421,185      | 71,914            |         | 211,394   |
| Indiana.....               | 593,386          | 2,500        | 894,025           |         | 210,920   |
| Illinois.....              | 61,904           |              | 842,736           | 145     | 580,289   |
| Wisconsin.....             | 97,077           | 24,313       | 46,305            | 19,128  | 255,526   |
| Minnesota.....             |                  |              | 28,509            | 18,408  | 1,068,718 |
| Iowa and Nebraska.....     | 266,729          | 522,020      | 63,461            |         | 107,508   |
| Other States—East.....     | 94,304           |              | 39,809            |         | 13,662    |
| Other States—West.....     | 59,803           |              | 13,183            |         | 191,852   |
| Total.....                 | 1,895,848        | 974,943      | 2,024,072         | 105,378 | 4,249,256 |

| States                                 | Whole Grain |         | Total Pack All varieties |
|--|-------------|---------|--------------------------|
|  | Golden      | White   |                          |
|  | Cases       | Cases   | Cases                    |
| Maine, Vermont, and New Hampshire..... | 131,204     |         | 790,167                  |
| New York.....                          | 522,638     | 3,461   | 1,330,637                |
| Maryland and Delaware.....             | 249,541     | 330,792 | 1,398,562                |
| Pennsylvania.....                      | 233,385     | 125,000 | 482,129                  |
| Ohio.....                              | 121,689     | 10,707  | 944,880                  |
| Indiana.....                           | 97,671      | 53,341  | 1,851,843                |
| Illinois.....                          | 880,296     | 262,184 | 2,636,554                |
| Wisconsin.....                         | 626,130     | 8,143   | 1,076,622                |
| Minnesota.....                         | 1,869,063   | 11,199  | 3,025,897                |
| Iowa and Nebraska.....                 | 132,408     | 10,050  | 1,102,176                |
| Other States—East.....                 | 6,104       | 23,433  | 177,312                  |
| Other States—West.....                 | 202,954     |         | 467,792                  |
| Total.....                             | 5,112,083   | 839,000 | 15,290,580               |



### Canned Peas Move Heavily in September

Heavy movement of canned peas continued in September, according to the stock report of the Association's Division of Statistics issued on October 16. Stocks on October 1, shipments in September, and shipments from June 1 to October 1 are summarized as follows:

|                                    | 1938-39<br>Cases | 1939-40<br>Cases |
|------------------------------------|------------------|------------------|
| Total stocks October 1.....        | 20,347,570       | 14,623,491       |
| Unsold stocks October 1.....       | 15,044,659       | 9,043,290        |
| Shipments during September.....    | 2,734,502        | 2,643,213        |
| Shipments June 1 to October 1..... | 9,736,594        | 9,129,105        |

Stocks on October 1 and shipments during September, by regions and varieties, are given in the following table:

|                            | Stocks canned peas October 1 |           |            | Shipments during September |
|----------------------------|------------------------------|-----------|------------|----------------------------|
|                            | Sold not shipped             | Unsold    | Total      |                            |
| <b>New York and Maine:</b> | Cases                        | Cases     | Cases      | Cases                      |
| Alaskas.....               | 26,565                       | 74,372    | 100,937    | 15,482                     |
| Sweets.....                | 557,998                      | 700,801   | 1,318,799  | 72,009                     |
| <b>Middle Atlantic:</b>    |                              |           |            |                            |
| Alaskas.....               | 89,385                       | 376,531   | 465,916    | 49,652                     |
| Sweets.....                | 26,921                       | 98,635    | 125,456    | 5,116                      |
| <b>Mid-West:</b>           |                              |           |            |                            |
| Alaskas.....               | 977,667                      | 2,703,384 | 3,681,051  | 633,646                    |
| Sweets.....                | 1,720,432                    | 2,560,070 | 4,280,502  | 1,035,779                  |
| <b>Western:</b>            |                              |           |            |                            |
| Alaskas.....               | 16,306                       | 5,335     | 21,641     | 95,922                     |
| Sweets.....                | 2,164,927                    | 2,464,262 | 4,629,189  | 735,517                    |
| <b>Total:</b>              |                              |           |            |                            |
| Alaskas.....               | 1,100,923                    | 3,159,622 | 4,260,545  | 794,702                    |
| Sweets.....                | 4,470,278                    | 5,883,068 | 10,353,946 | 1,848,511                  |

### Fruits and Vegetables in Cold Storage

Total stocks of all frozen fruits in cold storage on October 1 were reported by the Agricultural Marketing Service as 141,710,000 pounds, a decrease from September 1 of 1,347,000 pounds. Reports indicated that 26,697,000 pounds were in small containers of less than 30 pounds capacity, and 115,013,000 pounds were in containers of 30 pounds and over.

Stocks of frozen vegetables continued the seasonal increase during September. The into-storage movement was 6,483,000 pounds compared with 9,900,000 pounds for September, 1938. October 1, 1939, stocks were 6,870,000 pounds above those of a year earlier.

The following tables show stocks of frozen fruits and vegetables in cold storage on October 1, 1939, compared with previous periods:

|                                  | Oct. 1,<br>1938 | Sept. 1,<br>1939 | Oct. 1,<br>1939 |
|----------------------------------|-----------------|------------------|-----------------|
| <b>FROZEN FRUITS</b>             | 1,000<br>pounds | 1,000<br>pounds  | 1,000<br>pounds |
| Blackberries.....                | 5,566           | 5,408            | 8,387           |
| Blueberries.....                 | 5,541           | 2,204            | 3,069           |
| Cherries.....                    | 25,641          | 31,297           | 28,148          |
| Logan and similar berries.....   | 3,809           | 3,939            | 3,617           |
| Raspberries.....                 | 12,739          | 11,309           | 10,162          |
| Strawberries.....                | 42,959          | 47,609           | 44,911          |
| Other fruits.....                | 51,326          | 15,152           | 17,235          |
| Classification not reported..... |                 | 26,019           | 26,181          |
| <b>Total.....</b>                | <b>147,581</b>  | <b>143,057</b>   | <b>141,710</b>  |
| <b>FROZEN VEGETABLES</b>         |                 |                  |                 |
| Asparagus.....                   | 4,171           | 6,511            | 6,300           |
| Beans, lima.....                 | 14,875          | 10,540           | 18,311          |
| Beans, snap.....                 | 5,751           | 6,846            | 7,220           |
| Broccoli, green.....             | 797             | 989              | 1,240           |
| Corn, sweet.....                 | 7,009           | 7,280            | 7,697           |
| Peas, green.....                 | 27,178          | 30,103           | 28,187          |
| Spinach.....                     | 1,804           | 2,834            | 2,591           |
| Other vegetables.....            | 9,573           | 2,091            | 2,243           |
| Classification not reported..... |                 | 4,445            | 4,333           |
| <b>Total.....</b>                | <b>71,252</b>   | <b>71,639</b>    | <b>78,122</b>   |

### Complaints Issued Against Tobacco Companies

Complaints alleging violation of the Robinson-Patman Act were issued this week against three additional tobacco companies by the Federal Trade Commission. The complaints are similar to those against five tobacco companies noted in last week's INFORMATION LETTER. The three new companies are: Liggett & Myers, Stephano Bros., and the American Tobacco Co.

### Fruit and Vegetable Market Competition

Carlot Shipments as Reported to the Agricultural Marketing Service by Common Carriers

| VEGETABLES                         | Week ending—     |                  |                 | Season total to— |                  |
|------------------------------------|------------------|------------------|-----------------|------------------|------------------|
|                                    | Oct. 14,<br>1938 | Oct. 14,<br>1939 | Oct. 7,<br>1939 | Oct. 14,<br>1938 | Oct. 14,<br>1939 |
| Beans, snap and lima.....          | 51               | 143              | 76              | 8,223            | 6,891            |
| Tomatoes.....                      | 520              | 557              | 447             | 33,304           | 26,096           |
| Green peas.....                    | 92               | 51               | 86              | 6,079            | 6,888            |
| Spinach.....                       | 49               | 12               | 7               | 6,809            | 6,448            |
| Others:                            |                  |                  |                 |                  |                  |
| Domestic, competing directly.....  | 1,220            | 1,600            | 2,092           | 113,072          | 117,474          |
| Imports, competing indirectly..... | 61               | 77               | 86              | 522              | 469              |
| <b>FRUITS</b>                      |                  |                  |                 |                  |                  |
| Citrus, domestic.....              | 1,767            | 1,752            | 2,296           | 53,391           | 63,312           |
| Imports.....                       | 2                | 4                | 9               | 76               | 19               |
| Others, domestic.....              | 4,592            | 4,324            | 652             | 40,828           | 42,359           |

### Latest Regulations of Foreign Trade

The latest regulations promulgated by foreign countries, principally affecting foodstuffs, of which information is available at the Department of Commerce, are summarized below. This information is reported to the Department by American foreign officials.

**United Kingdom.**—In "special circumstances" the Import Licensing Department of the Board of Trade is prepared to consider applications for import licenses for specified goods—including crystallized and glace fruit, and biscuits—whose importation heretofore has been temporarily suspended.

Maximum prices permitted by the Ministry of Food were again advanced, effective October 16, for pork and pork products. The Ministry of Labor has announced that up to October 17, food prices in the United Kingdom have risen 9 per cent since the outbreak of war. The average percentage increase of September 30 over September 1 is as follows:

Sugar 47; fish 29; fresh eggs 19; salted butter 19; British beef 3 to 5; chilled or frozen beef 4 to 6; British mutton 4 to 5; frozen mutton 3 to 7; bacon 10; flour 3; bread 2; fresh butter 12; cheese 4; margarine 1; potatoes 1.

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